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an insurance company belong to the stockholders and not to the policyholders. *Pierce v. Equitable Life Assur. Soc.*, 145 Mass. 56, 12 N. E. 858. And even where there is a provision that the policyholders are to have a share in the surplus profits,—as in the Tontine policies—no right to any specific fund accrues, but only to such net earnings as are declared. *Fuller v. Knapp*, 24 Fed. Rep. 100; *Bewley v. Society*, 61 How. Pr. (N. Y.) 344. No trust relation is created by such provisions. *Everson v. Equitable Life Assur. Soc.*, 71 Fed. Rep. 570; *Uhlman v. N. Y. Life Ins. Co.*, 109 N. Y. 421, 429, 17 N. E. 363, and the policy-holder has no such title to any part of the surplus as to enable him to maintain an action at law therefor. *Greeff v. Equitable Life Assur. Soc.*, 160 N. Y. 19, 54 N. E. 712.

CRIMINAL LAW—INSTRUCTIONS—QUESTIONS OF LAW AND FACT.—In a murder trial the judge instructed the jury to convict of murder in the first degree, or acquit, *held*, reversible error. *Commonwealth v. Fellows* (1905), — Pa. —, 61 Atl. Rep. 922.

The trial judge ruled that as there was no evidence of anything but murder in the first degree, it would only confuse the jury to give instructions as to the lower degrees. The limit to the trial court's authority in such instructions seems to be a rather uncertain one as is evidenced by the previous decisions of the same court. *Shaffner v. Com.*, 72 Pa. 60; *McMeen v. Com.* 114 Pa. 300. Where there was no evidence of anything but murder in the first degree, it has been held no error to refuse instructions on the lower degrees. *State v. Kornstett*, 62 Kan. 221; *People v. Byrnes*, 30 Cal. 207; *O'Connell v. State*, 18 Tex. 343. The decision seems a very close one and there is much weight in the dissenting opinion.

CRIMINAL LAW—SUBJECT OF STATUTORY FORGERY.—Defendant fabricated a letter introducing him as J. Ogden Goelet to the employees of a prominent corporation, asking that courtesies be shown him, and purporting to be signed by an officer of the corporation. This officer was in no wise injured by the uttering of the letter. *Held*, that the defendant was properly convicted of statutory forgery. *People v. Abeel* (1905), — N. Y. —, 75 N. E. Rep. 307.

This case for the first time construes the New York Penal Code's definition of forgery. The code provides substantially that any person who shall utter any written communication purporting to have been written or signed by another person, and misrepresenting that person's sentiments, opinions, character, interests, or rights, or otherwise injuriously affecting him, is guilty of forgery. This decision is by a divided court (4 to 3) and the majority held that no injury to the person whose name was forged, was essential, if his sentiments or opinions were in fact misrepresented. This they deemed the plain meaning of the language. The three dissenting judges thought that the implication in the words "otherwise injuriously affecting" was that the misrepresentation meant was only such as worked an injury to the party misrepresented; else a written imputation of honest sentiments to a confirmed thief, purporting to be signed by him, would be forgery under the code, and other absurd consequences would follow. The general rule of statutory construction that each word should be given a meaning, seems

to be better complied with by the minority opinion than by the majority, in inferring from "otherwise" that the misrepresentation meant is misrepresentation that in law injures the person whose name is forged. And even though the code enjoins that penal acts be construed according to their fair meaning and not strictly, still perhaps some weight should have been given the fact that under the minority opinion the derogation of the common law would have been less than it is under the prevailing opinion: a letter of introduction, because it affected no legal rights, was not the subject of forgery at common law. *Waterman v. People*, 67 Ill. 91.

DAMAGES—BREACH OF CONTRACT—LOSS OF FUTURE PROFITS.—The plaintiffs, brokers in groceries, made a written contract with the defendant, a corporation engaged in the business of catching and packing fish, whereby the latter appointed them its exclusive agents for two years to sell 85 per cent. of its pack of fish, upon a brokerage of 5 per cent. At the end of the first year the defendant repudiated the contract and gave its business to another broker. *Held*, the contract was not invalid for want of mutuality of obligation; and the loss of *future* as well as of past profits, proximately resulting from its breach, is a proper element of damage, upon which evidence of sales made by the defendant through other agents is admissible. *Emerson et al v. Pacific Coast and Norway Packing Co.* (1905), — Minn. —, 104 N. W. Rep. 573.

The contract was signed by both parties; it obligated plaintiffs to use their best efforts to sell defendant's merchandise, and they incurred expenses thereunder. Hence, it was not optional on one side, but had mutuality of obligation, and an action for damages would lie upon its breach without cause. *Ames-Brooks Co. v. Aetna Ins. Co.*, 83 Minn. 346; *Fontaine v. Baxley*, 90 Ga. 416. But the most important question is whether evidence of sales made by the principal after the breach of the contract by the discharge of the salesman is admissible to show the extent of gains prevented. *Witherbee and Gray v. Meyer*, 155 N. Y. 446, well states, as the general rule, that the party injured by a breach of contract is entitled to recover gains prevented as well as losses sustained, subject to two conditions: (1) they must have been fairly within the contemplation of the parties at the time the contract was made; and (2) they must be certain, not only in their nature, but as respects the cause from which they proceed. Is the latter condition here complied with? Upon similar facts in *Union Refining Co. v. Barton*, 77 Ala. 148, *STONE, C.J.*, said: "The success of such an enterprise depends on so many contingencies that we can conceive of no means of making the necessary proof on which to found a verdict." *Brigham v. Carlisle*, 78 Ala. 243; *Beck v. West and Co.*, 78 Ala. 213; *Hair v. Barnes*, 26 Ill. App. 580; *Stern v. Rosenheim*, 67 Md. 503; *Howe Machine Co. v. Bryson*, 44 Ia. 159; *Washburn v. Hubbard*, 6 Lans. 11. However, *JAGGARD, J.*, seems correct in holding that the trend of authority and the weight of reason have established that an agent is entitled to damages for the future profits he would have made; and that such damages are not too conjectural and speculative, where profits are necessarily within the actual contemplation of both parties. *Beeman v. Banta*, 118 N. Y. 538; *Wells v. National Life Association*, 99 Fed. Rep. 222; *Mueller v. Mineral*